

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK:

AKO K. BURRELL,

VS.

Civil Index:

9:21-cv-11605

Amy Sweeney; PREA Dep. of CCF.

Bryan D. Mason; Sgt. of CCF.

Jessica Thomas; O.R.C. of CCF.,

Gordon; C.O. of C.C.F.

Deyo; C.O. of C.C.F.

BelAir; OMA Counselor of C.C.F.

U.S. DISTRICT COURT - N.D. OF N.Y.	
FILED	
OCT 27 2021	
AT	O'CLOCK
John M. Domurad, Clerk - Syracuse	

Defendants

Plaintiff, Ako K. Burrell, is acting "Pro-Se" in this 1983 Civil Action, and is of no law firm herein, and Plaintiff is an African American citizen of the United States of America, and as for his complaint herein, alleges the following:

JURISDICTION AND VENUE:

1. This is a Civil Action authorized by "42 U.S.C. sec. 1983," to redress the deprivation "Under color of law" of the rights secured by the U.S. Constitution of the United States. This Court has jurisdiction under "28 U.S.C. Sec. 1331 and 1343(A)(3)."

Plaintiff Burrell, seeks declaratory relief pursuant to "28 U.S.C. Section 2201 and 2202. Plaintiff Burrell Claim for injunctive relief are authorized by 28 U.S.C. Section 2283 and 2284 and rule 65 of the Federal Rules of Civil Procedure.

2. The Northern District of New York, is an appropriate venue under 28 U.S.C. section 1391(b)(2) because it is where the events giving rise to this claim occurred.

3. Plaintiff Ako Burnell, was at all times mentioned herein, a "Prisoner", in the custody of Clinton Correctional facility, in the State of New York. He is now currently confined in the Clinton Correctional facility, located in Dannemora, New York 12901.

THE DEFENDANTS HEREIN

4. The Clinton Correctional Facility is legally responsible for all operations of the facility, and the welfare of Prisoner's of that Prison.

5. Defendant Offender Amy Sweeney, is the PREA Deputy Superintendent of CCF,; She is legally responsible for the operation of the PREA claims and investigations of retaliation, and for the welfare of all the inmates of that prison

6. Defendant Sgt. Bryan D. Mason, is a Sergeant at the CCF, and is legally responsible for the operations of CCF, and for the welfare of all inmates of that prison.

7. Defendant Jessica Thomas, is a ^{Offender Rehabilitation Coordinator} ~~Sergeant~~ at the CCF, and is legally responsible for the operations of CCF, and for the welfare of all inmates of that Prison.

8. Defendant Gordon, is a Correctional Officer at the CCF, and held the rank as C.O. and was assigned to the CCF.

9. Defendant Deyo, is a Correctional Officer at the CCF, and held the rank as C.O. and was assigned to the CCF.

10. Defendant Bel Air, is a Office of Mental Health Counselor at the CCF, and held the rank as C.O. and was assigned to the CCF.

11.) Each Defendant herein, is sued individually and in his or her official capacity. At all times relevant to this case, Plaintiff Burnell was an inmate at the Clinton Correctional facility (herein after cited as "C.C.F.").

And at all times relevant to this case, Plaintiff Burnell was an "Prisoner."

12.) On September 09, 2021, at or about 9:00 am, Plaintiff was housed at the CCF., D-Block - 4 gallery; 37 Cell. Sgt. Bryan D. Mason (Defendant), and Correctional Officer (hereafter C.O.) Deyo, approached Plaintiff cell.

13.) Defendant Mason, Stated to Plaintiff "Hey, your mental health counselor wants to see you". I replied "I never wrote to speak to her, nor was I given a callout, so what does she want with me?"

14.) Defendant Mason then became irate, and hostile and C.O. Deyo produced a can of mace, and pointed it in the Plaintiff direction and stated "Shut the fuck up!! Get dressed and put your hands through the bars now!!"

15.) Plaintiff was scared to be sprayed by C.O. Deyo, and complied. Plaintiff was mechanically restrained. Plaintiff was not under any sanctions to be restrained, yet he was. A waist-chain, and hand cuffs were applied to Plaintiff.

16.) Defendant Mason and Deyo, escorted Plaintiff to the CCF, Hospital Building Third Floor. We arrived at or around 9:30 am.

17.) Plaintiff was told by a C.O. Gordon to "sit down, and shut the fuck up," in a waiting area, that held inmates. Plaintiff, went to urinate, due to all the fear and anxiety caused from the Defendants hostility, and threat of mice.

18.) The bathroom door to the restroom Plaintiff was using flew open and C.O. Gordon appeared, yelling "What the fuck are you doing? I thought I told you to stay put?" I stated, while my penis was in plain sight in my hands "using the bathroom".

- 19.) Plaintiff, then asked "Please Close the door, sir, I have a Shy bladder." C.O. Gordon then stated "I don't give two fucks about your bladder, the Sgt. Mason Said watch you for Contraband, so that's what I am doing!"
- 20.) Plaintiff, urinated, washed his hands, and exited the bathroom. Upon exiting the bathroom, he was Yanked by his waist Chain by C.O. Gordon and brought to a room on the same floor.
- 21.) Once inside this room, C.O. Gordon ordered Plaintiff "have a Seat," Plaintiff Sat down, and Sgt. Mason, and Deyo appeared. C.O. Gordon left and returned with leg irons.
- 22.) Plaintiff was told to place his feet on a table, attached to the Chair he sat. C.O. Gordon then applied the leg irons on Plaintiff legs/ankles, and then applied a lock type device, that Seized Plaintiff to the Chair.

- 23.) Sgt Mason then ordered "a cavity search" and told C.O. Gordon & Deyo to hold me down, and lower my pants.
- 24.) C.O. Gordon & Deyo, grabbed both my shoulders, and push my chest/torso onto the table or the restraint chair, and my view was blocked, but I felt several handles of hands, removing/pulling my state greens, and undershorts down to my thighs, exposing my buttocks.
- 25.) Defendant Bryan Mason, then stated "I'm going to ask you one time you piece of shit, what did you get rid of in that bathroom"; and smacked my buttocks. I replied "Nothing sir, nothing, C.O. Gordon watch me urinate". C.O. Gordon replied "I only seen your lil pecker (penis), I don't know what you got rid of, an I know if you ain't flush shit, because I would've killed you dead."

26.) I, Plaintiff, began to cry, & stated "I have no reason to possess contraband SIR, I was brought up here, because you said my OMH Counselor wanted to speak to me?" Both Nelson then stated "Bullshit, I wished you would refused to come, so we could've extracted you & then I could've knock your teeth out, all the fucking grievances you file, and your Chest Pain bullshit everyday, your going to Spend the night here, to OBS, see how you like it to be in a smock!"

27.) While Plaintiff went to speak, he felt his buttocks get spread wide, and felt a sharp rupture/puncture into his anal, and then felt a finger, then two, inside his bowels, moving around for at least 30 seconds. Plaintiff became erratic, moving and wriggling, C.O.'s Depp, and Gordon placed their elbows on Plaintiff neck & back, keeping him steady.

28.) Defendant Deyo they removed his keys, with his free hand and stated "It seems tight down there Sgt; lets use my keys to open that tight little lock," and I felt the set of several keys enter my rectum, and enter my anal, this lasted about 10 seconds, and was removed quickly, and I felt a DPP/tear.

29.) Plaintiff, was crying in agony, and begging the Defendants Deyo, and Gordon to stop Sgt. Mason, and to get help, and they to stop themselves, All of Plaintiff cries were ignored and the assault continued.

30.) Sgt. Mason, ordered Plaintiff pants to be pulled up, while at this time OMT Counselor BelAir (Defendant) entered the room. Sgt. Mason then directed this order to BelAir "Place this Piece of Shit in OBS, here's his retort, he wouldn't take the bait, so I couldn't extract him but he is not to go back to his cell he spending the night here's OMT BelAir nodded her head and closed the door

31.) Defendant BelAIR sat down after Defendants Sgt. Mason; Deyo; and Gordon, exited the room. She Stated "What did you do to Diss Mason off, well it doesn't matter what you say at this point, your being admitted so I'm not going to waste my time doing an evaluation. You'll be released tomorrow, when you see the Doctor, just try shutting the fuck up, I heard you screaming and crying like you were lying, it's only OBS, man the fuck up pussy!"

32.) Plaintiff, then informed BelAIR "Diss, they just violated me as a man they put their fingers, and keys in my ass". Defendant BelAIR became hostile and yelled "You can't be serious, why would you tell me this shit? Now I got to report it, because I know you fucking griever everything, now you really going into OBS, you are so fucking annoying". She got up and left the room.

33.) Defendants Mason Deyo; and Gordon returned and Gordon unlatched the setting device of the restraint Chair. A John Doe Sgt.; states "remove those leg irons," and Sgt. Mason states "No, fuck that, keep them on and make them tighter!" C.O. Gordon then applies the leg irons on tighter, cutting off circulation and preventing my ankles heel to flex.

34.) Sgt. Mason then ordered me to walk, to OBS Cell-12. I began to stand and could not balance took a step, and collapsed to the ground. I was picked up by a C.O. Fitzgerald and Newell, while Mason, Gordon & Deyo laughed.

35.) Sgt. Mason then stated "Stop fucking around and walk," I began to take several steps and fell again. I was picked up, and I explained the Civil Party from my assault and the leg irons prevented me from doing so, I was then dragged by C.O. Fitzgerald & Newell, and I cries due to my ankles on the ground.

36.) I, Plaintiff, was stripped Search my clothes were confiscated, and I were given a smock. I spent the night in OBS 12 cell, and I seen a Crustian and I was deemed suitable, I explained BelAir actions, and this male Doctor Stated "That's not our Policy, you should have been evaluated there is no need for you to be here". I was released and returned to D-4-37 cell. I was seen by a Doctor, and denied my injuries, because Sgt mason said to do so or die.

37.) On September 11, 2021, C.O. Tucker served me with a Tier ~~III~~ misbehavior report for falling on the floor with charges of 107.10 Interference with Employee; 106.10 Refusing a Street Order.

38.) I wrote to PREA Del Sweeney, to inform her of this incident on September 11, 2021, and I informed her that Sgt. mason Sexually assaulted me and wrote me a Tier III retribution and that it violated PREA. Sgt. Mason then appeared to my cell, on September 12, 2021, then stated "you stupid son of a bitch Del Sweeney told me to keep you silent you had your chance with the Doctor, and reported no injuries, so drop the PREA or I'll hang you next".

39.) I then wrote to I.G.R.C, and Superintendent McIntosh, and reported the events outline in the complaint detailing the Sexual Assault on September 13, 2021. I received no response.

40.) On October 1st, 2021, Plaintiff then filed an appeal to the C.O.R.C, with a certified mail receipt to the Rachel Seguin Assistant Director. Prior to that Plaintiff wrote the C.O.R.C, to appeal the no response/ denied of his grievance on September 29, 2021.

41.) On October 14, 2021, the Defendant O.R.C Thomas renders a guilty disposition for the Dr ITT misbehavior report written by Sgt. Maway and Plaintiff received 100 days confined to Special Housing Unit; 100 days loss of Commissary and Packages.

42.) Defendant Thomas, rejected to hear Plaintiff testimony; denied Plaintiff Tier Assistance) witnesses; documentary evidence. She called Sgt. Maway to corroborate and a Capt. Beere who threw out Plaintiff defense papers, that should that Defendant Thomas conducted the hearing outside the scope of 4932; (See Exhibit A).

EXHAUSTION OF REMEDIES

- 43.) On September 10, 2021, Plaintiff filed a grievance to the CCFY D.O.R. by he received no response. On September 21, 2021, Plaintiff filed a grievance appeal to the Superintendent. On October 1, 2021, I appealed to C.O.R. and received no response.
- 44.) On October 15, 2021, Plaintiff, received a memo from the grievance supervisor, stating that he exhausted the Prison Litigation Reform Act.

LEGAL CLAIMS

- 45.) The Defendant Sgt. Bryan Mason, Causing Search and Placement of his hand/fingers inside of Plaintiff anus, causing Feciton damage, and mental health depression, Suicide Contemplation, and disorders. Violated the Plaintiff 8th & 14th Amendment Rights, Pursuant to the United States Constitution. To be Free from Cruel & Unusual Punishment, and to be searched Equally, and be Protected equally.
- 46.) The Defendant Sgt. Bryan Mason, Filing a misbehavior report for charges of 106.10; & 107.10, refusing a direct order & interferency was a retaliatory act, against Plaintiff for reporting the PREA (i.e. sexual assault) to OMH Counselor Bel-Air. Violated Plaintiff 1st Amendment Right, to redress the government and the results of Sgt Mason report was 100 days Confined in the Special Housing Unit Violated Plaintiff 8th Amendment & 14th Amendment Rights, Pursuant to the United States Constitution.

47.) The Defendant Sgt. Bryan Mason, application of leg irons and refusal to remove them, and force Plaintiff to walk, causing damage to his Achilles heels not to flex, and to antagonize and humiliate plaintiff, causing him to fall on the ground, and suffer a back injury, and nerve damage. Violated Plaintiff 4th; & 8th Amendment Rights, Pursuant to the United States Constitution.

48.) The Defendants Gordon, & Deyo, assistance in Sgt. Mason Sexual assault on Plaintiff. By holding Plaintiff down on the restraint chair in the CCF, Hospital Building Third Floor, Mental Health Interview room, and putting Plaintiff pants and undershorts down so Sgt. Mason can insert his fingers inside Plaintiff arms, and rectum causing physical and mental health damages. The refusal to stop, and prevent this assault as Plaintiff cried and begged for them to stop, and to help him and stop Sgt. Mason. Violated Plaintiff 8th; & 14th Amendment rights, Pursuant to the United States Constitution.

49.) The Defendant Amy Sway, disclosing my PREA Complaint against Sgt Mason, and informing Sgt Mason to "Silence" Plaintiff "in order for his PREA Investigation to not go to the Office of Special Investigations". Was a deliberate indifference to Plaintiff 1st Amendment Rights and Caused Plaintiff to be threatened by Sgt. Mason "Not to report your injuries or die", when Plaintiff went to see the Doctor for his anal and back injuries. Was a violation 8th & 14th Amendment Rights, Pursuant to the United States Constitution.

50.) The Defendant's OMH Counselor BelAir, and Sgt. Mason acted in concert to have Plaintiff admitted to a Observation Satellite Unit, against his willfully nature and a mental health evaluation. Under the instrumental influence, and Persuasive authority, OMH Counselor BelAir, admitted Plaintiff to OBS, for reporting a "PREA Claim" against Sgt. Mason, and for "being an annoying piece of shit". Sgt. Mason utilized OBS as a punitive action to humiliate Plaintiff, by fabricating a mental health refusal, that was a false pre-text to have Plaintiff brought to OMH. BelAir Refusal to conduct a mental health evaluation before admitting Plaintiff to OBS, was a violation of Plaintiff's

50.) 1st; 8th; & 14th Amendment Rights, Pursuant to the United States Constitution.

51.) The Defendant Offender Rehabilitator Coordinator Jessica Thomas, acted as a delegate, to conduct a Tier III hearing against Plaintiff, for the disciplinary charges of 106.10 & 107.10. Her arbitrary, & capricious, disposition of guilty, and imposition of 100 days of Special Housing Unit confinement; commissary, and packages privileges revoked. Was outside the parameters of Title 7 of New York Code Rules & Regulations Directive 4932; and the PREA. "no reprisals clause." Violated Plaintiff 1st; 5th; 8th; & 14th Amendment Due Process Rights, Pursuant to the United States Constitution.

52.) The Plaintiff repeats and reargues Paragraphs 1 to 51, inclusive, with the same force and effect as if set forth at length.

RELIEF SOUGHT

WHEREFORE, Plaintiff A.K. Bell demands judgment against Defendants: Sgt Bryan Mason; C.O. Gordon; C.O. Delyo; OMT BelAir; and O.R.C. Thomas, Jessica.
Jointly and Severally for,

Compensatory damages in the amount of \$150,000.00

and

Further demands judgment against each of said Defendants, Jointly and Severally, for

Punitive damages in the amount of \$800,000.00,

Plus the cost of this action and such

Other relief as the Court deems just
and equitable.

A. Bell

Pro-se, Plaintiff

October 21, 2021

"There was no

Notary Available"

Sworn to before me this
— day of _____, 2021

NOTARY PUBLIC

Exhibit

A

WITNESS INTERVIEW NOTICE (For Superintendent's & Disciplinary Hearings)Clinton

Correctional Facility

Burrell, A

Inmate Name (Print)

F B 2994

DIN

An inmate may call witnesses on his or her behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or correctional goals.

If permission to call a witness is denied, or if a requested witness testifies outside the presence of the inmate charged and/or if the inmate is not permitted to review the testimony of a witness, the reason for such determination must be recorded on this form and copies given to the inmate by the hearing officer and included in the hearing record.

Reference: Directive #4932, Sections 253.5 and 254.5.

OMH Staff

Requested witness:

- Permission to call the requested witness is denied.
 Requested witness will testify outside inmate's presence.
 Inmate is not permitted to review requested witness's testimony.

Date: 10/13/21 Explanation: _____Confidential Mental Health testimonyCO Gordon

Requested witness:

CO DeyoCO FitzgeraldCO Newell

- Permission to call the requested witness is denied.
 Requested witness will testify outside inmate's presence.
 Inmate is not permitted to review requested witness's testimony.

Date: 10/14/21 Explanation: _____Would be redundant - substantial evidence
of video.One Plante

Requested witness:

- Permission to call the requested witness is denied.
 Requested witness will testify outside inmate's presence.
 Inmate is not permitted to review requested witness's testimony.

Date: 10/14/21 Explanation: _____I/I provides no substantial reason the
testimony is relevant to the charges in the
MBR -

Signature

VILLI M

Hearing Officer

-Restrained-

Inmate

Would SignF B 299410/14/21

Date Received